

OPTION AGREEMENT

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THIS AGREEMENT is made and entered into this 30th day of April, 1999, by and between H&M PROPERTIES, L.L.C., a Tennessee limited liability company, hereinafter referred to as "Owner", and COGENTRIX ENERGY, INC., a North Carolina corporation, hereinafter referred to as "Buyer."

W I T N E S S E T H:

For and in consideration of the mutual covenants and promises herein contained and the consideration hereinafter set forth and other good and valuable consideration paid by Buyer to the Owner, the receipt and sufficiency of which are hereby acknowledged, Owner does hereby grant to Buyer, its successors and assigns, the exclusive right and option to purchase (the "Option"), upon the terms and conditions hereinafter set forth, all of the property lying and being situated being in DeSoto County, Mississippi and described in Exhibit A attached hereto and made a part hereof, all hereinafter referred to as the "Property."

1. Term.

- (a) The term of the Option herein granted shall commence on April 30, 1999, and expire at midnight October 29, 1999. As consideration for the granting of this Option, the Buyer shall make payment of Twenty-Five Thousand Dollars and no/100 (\$25,000) at the time this contract is accepted by the Owner. This Twenty-Five Thousand Dollars and no/100 (\$25,000) shall be applied toward the purchase price at closing.
- (b) Buyer may extend the term of the Option herein granted for an additional six months commencing on October 30, 1999 and ending on April 29, 2000 upon the same terms and conditions set forth herein. As consideration for the extension of the Option term, the Buyer shall make payment of Forty Thousand Dollars and no/100 (\$40,000) at the time the Option term is extended by Buyer. This Forty Thousand and no/100 Dollars (\$40,000) shall be applied toward the purchase price at closing. In order to exercise this right to extend the Option term hereof, Buyer must give Owner written notice of their intention to extend the initial Option term with the Forty Thousand and no/100 Dollars (\$40,000) payment before the expiration of the initial Option Term.
- (c) Buyer may extend the term of the Option herein granted for an additional six months commencing on April 30, 2000 and ending on October 29, 2000 upon the same terms and conditions set forth herein. As consideration for the extension of the Option term, the Buyer shall make payment of Forty Thousand Dollars and no/100 (\$40,000) at the time the Option term is extended by Buyer. This Forty Thousand and no/100 Dollars (\$40,000) shall be applied toward the purchase price at closing. In order to

exercise this right to extend the Option term hereof, Buyer must give Owner written notice of their intention to extend the initial Option term with the Forty Thousand and no/100 Dollars (\$40,000) payment before the expiration of the first extension of the Option Term.

2. **Purchase Price.** The purchase price for the Property shall be Five Hundred Six Thousand and no/100 Dollars (\$506,000). The property described in Exhibit A includes any improvements thereon.

3. **Survey.** Within thirty (30) days of execution of this Option Agreement, Owner shall, at his sole cost and expense, cause to be prepared by a licensed surveyor a Class B survey of the Property. The survey shall reflect any improvements, easements, encroachments or other similar encumbrances apparent and visible on the ground. Said survey shall also reflect the location and size of all utilities servicing the Property. The survey shall be the property of the Owner and Buyer shall pay for the survey at Closing and Buyer shall take title to the survey at the time of Closing. The parties hereby agree that at such time as a proper legal description of the Property has been prepared by the aforementioned surveyor, this Agreement shall be deemed to be amended to reflect such description, a copy of which shall be attached to an Addendum to this Agreement.

4. **Access.** From the date hereof until the transaction contemplated hereby is closed or otherwise terminated, Buyer shall have free access to the Property for the purposes of making preliminary engineering studies, including without limitation, soil test borings, surveys, environmental audits, drainage tests and other studies necessary or desirable.

5. **Representations and Warranties.** Owner represents and warrants to, and agrees with Buyer as follows:

- (a) Owner has good, marketable and insurable title to the Property, free and clear of all mortgages, liens, sales contracts, leases, tenancies, security interests, covenants, conditions, restrictions or easements that would interfere with or prohibit the development of the Property as an industrial site, rights-of-way, judgments and other matters affecting title except the lien for current ad valorem taxes.
- (b) Owner is the sole owner in fee simple of the Property and Owner has the sole right and authority to grant the Option made hereby, and no other person or parties are required to execute this Option or the deed of conveyance provided for herein.
- (c) There is no pending or threatened condemnation, litigation, investigation or similar proceeding affecting the Property or any portion thereof, nor has Owner knowledge that any such action is presently contemplated.

Transactions contemplated herein are not now challenged by any governmental agency or any other person.

- (d) No portion of the Property is affected by any special assessments, whether or not constituting a lien thereon.
- (e) Except as herein otherwise provided, from and after the date hereof, Owner will refrain from
  - (i) performing any grading or excavation, construction, or removal of any improvements, making any other changes or improvement upon the Property, exploring for and/or producing oil, gas or other minerals; and/or removing or harvesting any timber or pulpwood; and,
  - (ii) committing any waste or nuisance upon the Property;
- (f) Owner will maintain and keep the Property in its present condition and will observe all laws, ordinances, regulations and restrictions affecting the Property and its use, until the closing date.
- (g) No portion of the Property has been filled or grated with any material other than organic type materials.
- (h) Between the date hereof and the Closing Date, Owner shall not sell, transfer, convey or mortgage the Property, or any part thereof, or take any such action, or permit any action to be taken by any other person, that might affect title to the Property or otherwise impair the value of the Property to Buyer, or sell, transfer, option, convey or mortgage the Property (other than to Buyer) or take any action, or permit any action to be taken by any other person, that might affect title to the Property or otherwise impair the value of the Property to Buyer, or interfere with or prohibit the development of the Property as an industrial development, or enter into any construction contract.
- (i) Owner represents that the only broker or agent representing Owner's interest in this transaction is Brown Properties, Southhaven, Mississippi. Buyer represents that no broker has represented them in this transaction. Buyer is not responsible for payment of Owner's Broker's commission. Owner and Buyer hereby represents and warrants that they have not employed any other agents, brokers or other such parties in connection with this transaction, and each agrees that it shall indemnify and hold the other harmless from and against any and all claims of all agents, brokers or other such parties claiming by, through or under the respective indemnifying party, and this indemnify shall survive the closing and shall not be deemed merged therein.

- (j) Owner is not in breach or violation of any statute, ordinance, rule, permit, license, or regulation, or under any order of any court or governmental instrumentality with respect to the Property.
- (k) Owner is duly organized and validly existing under the laws of the state of its formation and has all requisite power and authority in such state and in the State of Mississippi to carry on its business as it is now being conducted and to enter into and perform this Option Agreement. The execution of the Option Agreement, the consummation of the transactions herein contemplated and the performance or observance of the obligation of the Owner hereunder and under any and all other agreements and instruments herein mentioned to which Owner is a party have been duly authorized by requisite action and are enforceable against Owner in accordance with their respective terms. The individuals executing this Option Agreement on behalf of the Owner are authorized to act for and on behalf of and to bind the Owner in connection with the Option Agreement.

The representations and warranties set forth in this agreement shall be continuous and shall be true and correct on and as of the date of closing with the same force and effect as if made at that time, and all of such representations and warranties shall survive the closing and shall not be deemed merged therein and shall not be affected by any investigation, verification or approval of any party hereto or by anyone on behalf of any party hereto; and Owner agrees to indemnify and hold Buyer harmless of and from same.

6. **Title Policy.** The Owner shall, at his sole cost and expense, deliver to the Buyer prior to closing a commitment for an Owner's Title Insurance Policy certifying that Owner has good, marketable and insurable title to the Property, free and clear of all mortgages, liens, sales contracts, leases, tenancies, security interests, covenants, conditions, restrictions, easements, rights-of-way, judgments and any other matters affecting title except the lien for current ad valorem taxes. The premium for any such policy issued shall be paid by Buyer.

7. **Conditions of Sale.** At Buyer's option, this transaction shall be null and void unless the following conditions shall occur or be found to exist satisfactory to the Buyer prior to closing.

- (a) **Zoning.** Owner shall provide proof that the Property is zoned and otherwise suitable for erecting and operating an industrial site.
- (b) **Utilities.** Owner shall provide assurance that water, sewer, telephone and customary industrial electricity lines are available at or to the Property and which are sufficient to service the Buyer's proposed usage at normal costs and rates.

- (c) Drainage, Soil Conditions, Etc. The Property has adequate storm draining, adequate fire protection, availability of adequate garbage disposal and meets soil percolation tests. The Buyer is able to obtain satisfactory soil, percolation and boring tests showing and demonstrating that the construction of improvements is feasible without significant additional costs because of surface and/or sub-surface conditions.
- (d) Flood Plain. Owner shall provide assurance that the Property is not in a flood plain.
- (e) Historic Site. Owner shall provide assurance that there are no historic sites on the Property.
- (f) Environmental Compliance. Owner shall provide assurance that the Property has in the past, does now and at closing will conform to all applicable state and federal environmental protection legislation and regulations and there have been, are now and at closing will be no handling, storage, treatment, transportation or disposal of any solid or hazardous waste or hazardous substances on or across the Property. The expense of bringing subject Property into compliance with applicable law shall be paid by Owner.
- (g) Governmental Permits. Buyer will be able to obtain from the Government entities having jurisdiction approval of its plan for ingress and egress into the Property from public roadways serving the Property and that Buyer will be able to secure from the Government entities for its site development plan as an industrial site.
- (h) Force Majeure. The Property or any portion thereof shall not have been threatened to be adversely affected in any way as a result of fire, explosion, earthquake, disaster, accident, any action of a governmental authority, flood, embargo, riot, civil disturbance, uprising, activity of the armed forces or act of nature or the public enemy.

8. **Closing.** This transaction shall be closed at the office of Phelps Dunbar, L.L.P. in Jackson, Mississippi, or at such other place as the parties may mutually agree.

9. **Warranty Deed.** On closing date, the Owner shall deliver to the Buyer a General Warranty Deed, conveying the Property in fee simple, free and clear of all liens and encumbrances. This General Warranty Deed shall convey all property interests of the Owner in the Property, including without limitation, all mineral interests. All costs of preparation of the General Warranty Deed shall be paid by the Owner.

10. **Taxes.** All real estate taxes for the Property for the tax year during which the closing occurs shall be pro rated at closing based upon the latest information available. If the closing occurs

on a date when the taxes for such year are not paid but the current year's assessment is not available, the taxes will be pro rated based upon the prior year.

Owner shall execute all documents at closing to satisfy sales, income or other tax obligations arising as a consequence of the sale of the Property. Owner indemnifies Buyer against all state and federal tax claims (except ad valorem taxes) asserted or which may be asserted against Owner arising as a consequence of the sale of the Property, and this indemnity shall survive the closing and shall not be merged therein.

**11. Default.** If the Owner is unable to convey title to the Buyer in accordance with the requirements of this Agreement, or if the Buyer elects to terminate this Agreement by reason of any of the provisions of paragraph 7 not being to the Buyer's satisfaction, then the Option payments shall be refunded to the Buyer in full cancellation of this Agreement and termination of the rights of all parties hereto. If the Buyer accepts the Property, and the conditions thereof, and if the Owner fails to consummate this Agreement for any reason other than default of the Buyer, then the Buyer may exercise such rights and remedies as may be provided for in this Agreement or may be provided for or allowed by law or in equity, including, but not limited to, an action for specific performance or for monetary damages. If the Buyer fails to consummate this Agreement after notice of intent to exercise the option, through no fault or delay of the Owner, then the Option payments shall be liquidated damages and the Owner shall not have any other remedy or rights against the Buyer.

**12. Condemnation.** If any of the Property is taken by eminent domain proceedings prior to the date of closing or if any condemnation proceedings are pending at date of closing, this Agreement shall, at Buyer's option, be null and void and the Option payments shall be refunded to the Buyer in full termination of the obligation of both parties under this agreement.

**13. Election to Exercise Option.** If Buyer elects to exercise the Option to purchase the Property, it shall, during the term of the Option, give written notice of its election to exercise the same to Owner by delivery or by registered or certified mail, return receipt requested, at Owner's address as set forth in paragraph 15 hereof. The closing shall occur no sooner than thirty (30) days and no later than sixty (60) days after the exercise of the Option, unless otherwise fixed by agreement of the parties.

**14. Assignment.** This Option Agreement shall be freely assignable by Buyer and in the event of the exercise of this Option, title may be taken either in the name of Buyer or its nominees or designees. All rights, powers and privileges herein reserved to either party shall inure to the benefit of and be held by their respective successors, heirs, representatives, and assigns, and likewise all liabilities and obligations imposed upon each shall be binding upon their respective successors, heirs, representatives, and assigns.

**15. Notice.** All notices to be given hereunder shall be in writing and shall be considered to be delivered if deposited in the United States Mail, postage prepaid, and certified to Buyer at:

Cogentrix Energy, Inc.

9405 Arrowpoint Boulevard  
Charlotte, North Carolina 28273-8110  
Attention: Dennis Alexander

with a copy to: Stephen H. Leech, Jr.  
Phelps Dunbar, L.L.P.  
Post Office Box 23066  
Jackson, Mississippi 39225-3066

and to Owner at: H&M Properties, L.L.C.  
529 Old Hickory Blvd., Suite D  
Jackson, Tennessee 38035  
Attention: Larry Becker

**16. Closing Expenses.** Owner shall pay the costs set forth herein with respect to the Closing and all costs and expenses incurred by it with respect to the Closing and all costs and expenses incurred by it with respect to this Agreement and its Closing. Buyer shall pay for the Closing expenses as set forth herein and the costs and expenses incurred by it with respect to this Agreement and its Closing.

**17. Miscellaneous.**

- (a) Time is of the essence as to all matters covered in this Option Agreement.
- (b) This Option Agreement and the documents referred to in this Option Agreement constitute the entire Agreement between the parties and there are no other conditions, covenants, or agreements which shall be binding between the parties.
- (c) This Option Agreement shall be governed by and shall be interpreted in accordance with laws of the State of Mississippi.
- (d) This Option Agreement may be recorded in the land records of the Chancery Clerk of DeSoto County, Mississippi at the discretion of the Buyer.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first set forth above.

Owner:

H&M PROPERTIES, L.L.C.

BY: [Signature]

TITLE: Managing Partner

Buyer:

COGENTRIX ENERGY, INC.

BY:

*Frank C. Perrotti*

TITLE:

*VICE PRESIDENT*



ACKNOWLEDGMENTS

STATE OF Tennessee  
 COUNTY OF Madison

Personally appeared before me, the undersigned authority in and for said county and state, on this the 4<sup>th</sup> day of May, 1999, within my jurisdiction, the within named [Signature], who acknowledged that he is Managing Partner of H&M Properties, L.L.C. a Tennessee limited liability company, as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do.

(SEAL)

[Signature]  
 Notary Public

My commission expires:

January 22, 2003

STATE OF North Carolina  
 COUNTY OF Mecklenburg

Personally appeared before me, the undersigned authority in and for said county and state, on this the 30<sup>th</sup> day of April, 1999, within my jurisdiction, the within named Frank C. Peacock, Jr., who acknowledged that he is Vice President of Cogentrix Energy, Inc. a North Carolina corporation, as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said limited corporation so to do.

(SEAL)

[Signature]  
 Notary Public

My commission expires:

May 19, 2002

BROKER'S JOINDER

The undersigned joins in the execution of this Option Agreement for the purpose of representing and warranting to Owner and Buyer that the Broker (i) is a duly licensed real estate broker in the State of Mississippi, (ii) is duly authorized to earn and receive a commission in connection with the transaction evidenced by this Option Agreement, (iii) has contacted no other real estate broker, finder or other party in connection with this transaction whom fees may be due or payable. Notwithstanding anything contained in this Option Agreement to the contrary, this provision shall survive the closing or any termination of this Option Agreement.

**BROKER**NAME: Jim Brown, Brown PropertiesBY: Jim BrownTITLE: President, James L. Brown, Inc dba Brown Properties

## EXHIBIT "A"

Land situated in Section 15, Township 1, Range 8 West described as follows:

Commencing at the intersection of the existing north right-of-way line of Stateline Road (40' CL-Row) and the existing east right-of-way line of Tulane Road (40' CL-Row). Thence along the said north line of Stateline Road S89°18'54"E, 511.50 feet to the "point of beginning"; thence along said north line of Stateline Road S89°18'54"E, 860.00 feet to a point; thence N00°41'06"E, 1114.66 feet to a point on the Tennessee-Mississippi state line; thence along the said state line N89°07'55"W 860 feet to a point; thence S00°41'06"W, 1117.40 feet to the "point of beginning" and containing 22.034 acres more or less. All bearings are relative.

Property is subject to a 10' slope easement as recorded in book 80, page 369.

*INDEXING INSTRUCTIONS:*

Section 15, Township 1  
Range 8 West,  
DeSoto County, Mississippi

*PREPARED BY:*

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